IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETITION UNDER CHRISTIAN MARRIAGE ACT. No 3 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LILLYKUTTY MATHEW

Versus

C.J. SIMON

Appearance:

MS RANI ADVANI for Petitioner

MR KK NAIR for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of Order: 20/04/2000

CAV JUDGMENT

This is a petition filed by a Christian wife for a decree of nullity of marriage with the respondent, also a Christian, particularly on the ground that the consent of the petitioner for the marriage in question with the respondent was obtained by fraud.

2. The petitioner's case, as stated in the petition, is as under :-

2.1 Both the petitioner as well as the respondent are

Christians. Their marriage was solemnized on 19.5.1985 at St.Marry"s Church, Kuravilangadu, Kerala in accordance with the religious rites and customs of Roman Catholic.

2.2 The petitioner had a decent job in Ahmedabad since 1982, but due to the frequent communal riots in Ahmedabad, the petitioner thought of getting married and settling down in Kerala. During the summer vacation of 1985, the petitioner went to Kerala to meet her parents. At that time, one of her neighbours Mr Chako brought a proposal of marriage through his friend Mr Mathachan. Mr Mathachan is a marriage broker who had taken Rs.1000/- by way of commission. Mr Mathachan introduced the respondent as an eligible bachelor to the petitioner. The respondent informed the petitioner and her parents that he had done his B.A. and was working with AGRO Corporation and drawing a salary of Rs.1400/-. He also informed the petitioner that he was the owner of 3 acres of fertile land with a house in Kerala. Since the petitioner did not have enough time to examine the correctness of the statements made by the respondent, relying upon the broker who was introduced by the neighbour of the petitioner's parents, they went ahead with the said proposal.

2.3 The petitioner and the members of her family were particular that the bridegroom should be educated and employed and should have sound financial stability. The petitioner also wanted that her husband should have sufficient educational qualification. In the above circumstances, the petitioner and her family members were very particular about the educational qualification, job and financial status of the bridegroom. They told the respondent and his relatives that they are interested in the alliance only if the bridegroom is having good academic qualification and only if he is well placed in life. In reply to these specific demands, the petitioner and her relatives were told by the respondent and the broker that the respondent is a graduate and employed in an organization viz. AGRO Engineering Corporation, a State Government undertaking and was drawing a handsome salary of Rs.1400/- a month + other allowances. The respondent had also told the petitioner that he is the youngest son of his parents. He had also told the petitioner that his two elder brothers are already married and living separately. Relying upon the statements given by the respondent, the petitioner and her parents decided to proceed with the marriage. The petitioner met the respondent only three times prior to the engagement as it was an arranged marriage. The petitioner had never met the respondent privately before

the marriage.

2.4 Before the engagement the respondent demanded a pocket money of Rs.10,000/- from the father of the petitioner though it was not a custom. At the time of the marriage, the respondent demanded a sum of Rs.1,00,000/- by way of dowry which the petitioner's father declined. However, the petitioner's father gave him gold and property of 50 cents worth Rs.1,00,000/- at the relevant time. On 19.5.1985, the petitioner and the respondent got married at Sr.Marry's Church, Kuravilangadu.

After the marriage, there was no honeymoon. The respondent did not take the petitioner to any of his relatives or friend's places. After the marriage, the petitioner stayed with the respondent for about a month and during the last week of June, 1985 the petitioner returned to Ahmedabad. During this stay with the petitioner, the respondent mortgaged the gold which was given to him at the time of marriage in order to meet his financial requirements. At the time of the marriage, the respondent had a debt of Rs.20,000/- which he had borrowed from different people. The gold which the respondent had mortgaged has not been returned to the petitioner till this date. Though as per the understanding after the marriage, the petitioner was to resign her job in Ahmedabad and stay with the respondent in Kerala, the petitioner was forced to come back to Ahmedabad as there was no source of income with the respondent.

2.5 The petitioner came to know that whatever the respondent had told her and her parents regarding his income, qualification and family status was absolutely wrong. The petitioner came to know that the respondent had two younger brothers and both of them had married and were having children. (At the hearing, a reference is made to the custom of the community that the property of the father is given to the youngest son and, therefore, the respondent not being the youngest son, was not going to get the property as per the custom of the community). The petitioner did not have any property except 50 cents of land. To the utter shock and surprise of the petitioner, she came to know that the respondent was unemployed and was not even a graduate. When the petitioner made enquiries from the respondent about the details of his employment, the respondent evaded answers. The petitioner submits that she gave consent to the marriage only because the respondent represented and made her to believe that he was a graduate and was employed

with AGRO earning a decent monthly salary of Rs.1400/-. When the petitioner wanted to discuss the future plan, the respondent confessed that he had no avocation in life. The respondent told the petitioner that if the petitioner resigns her job and lives in Kerala, he was not having any means to support the family as he was not employed. He also expressed his helplessness to join the petitioner at Ahmedabad since he did not even possess the educational qualification to secure a job in Ahmedabad.

2.6 The petitioner has stated that if the petitioner had the knowledge about the real state of affairs of the respondent, she would not have given her consent for the marriage. The petitioner had given the consent for the marriage particularly with a reference to the purported quality of the respondent which he claimed to have, but the respondent deliberately concealed several significant factors and made representations to the petitioner in order to obtain her consent for the marriage. The representations made by the respondent and the broker regarding the employment, financial status and educational qualifications were all false and were made with an intent to defraud the petitioner. Thus, the consent of the petitioner for the marriage was obtained by fraud and, therefore, the petitioner is entitled to get a decree declaring her marriage with the respondent as null and void.

2.7 In the petition, the petitioner had initially stated that with a view to see that the behaviour of the respondent changes, the petitioner brought the respondent to Ahmedabad and petitioner and the respondent lived at Azad Society, Ambawadi between 15.12.1985 and 31.12.1985 and that this was the last time the petitioner and the respondent lived together as husband and wife and that, thereafter they never lived together.

2.8 In the petition, as originally drafted, the petitioner had also invoked the ground contained in Section 19(1) of the Indian Divorce Act, 1869 to the effect that the respondent was impotent at the time of marriage and at the time of the institution of the suit. However, the said ground was not pressed at the hearing of this petition and, therefore, the petition has been heard only for the prayer for decree of nullity of marriage on the ground that the petitioner's consent was obtained by the respondent by fraud.

3. The respondent has filed counter affidavit denying the petitioner's case and stating that the respondent had done his B.A. in Economics and the

respondent was employed as a representative with Agro Chemicals and was receiving Rs.1500/- from the said employment. The respondent has asserted that the respondent was a degree holder and had a reasonable job, temporarily, at the time of marriage and that his financial stability was also sound, that he never informed anybody that he was the owner of 3 acres of land and a house; the 3 acres of land and a house was the property belonging to the respondent's father. The marriage was an arranged marriage and there were sufficient enquiries from both the families before the marriage as the two families are situated within a distance of 8 kms. The financial status of both the families was equal at the time of marriage and since the respondent had a reasonably good job, temporarily, at the time of marriage, the respondent's financial stability was also sound. The petitioner was a Typist and she did not pass the pre-degree course. Hence, she cannot legitimately expect a higher qualification from her husband. Before the marriage, the petitioner's parents and other relatives visited the respondent's house on four occasions and ascertained and knew the real situation. There was no occasion for the respondent to tell the petitioner that the respondent was the youngest son of his parents as the respondent had one elder brother and one younger brother. The respondent also denied the petitioner's case of demand of Rs.10,000/- as pocket money before the engagement or thereafter. The petitioner and the respondent had a private talk on the first occasion for about 40 minutes. The respondent did not ask for any dowry of Rs.1,00,000/- from the petitioner or her parents nor did the respondent receive any gold from the petitioner and her parents, but the petitioner's father assigned about 45 cents of land in the joint names of the petitioner and the respondent. The respondent also denied the petitioner's case that the respondent had mortgaged the petitioner's gold or that the respondent had a debt of Rs.20,000/- at the time of marriage. It is stated that the petitioner returned to Ahmedabad on her own volition.

It is also contended that it was not the respondent who was demanding money from the petitioner, but the petitioner was demanding money from the respondent. As regards the age, the respondent admits that at the time of marriage he was aged 41 years and the petitioner was aged 29 years but the respondent denied the allegation that he had held out his age to be 31 years. The respondent has also stated that he had never gone to Ahmedabad and that this Court has no jurisdiction to hear and decide this petition.

As regards the allegations of impotence, the same are denied and various letters are produced with the counter affidavit to show smooth relations between the parties.

4. Though the petitioner did file affidavit in rejoinder, the same is not taken into account as the learned counsel for the respondent had prayed for time to meet with the affidavit in rejoinder. However, since the affidavit in rejoinder is more or less reproduction of the petitioner's case in the original petition and is also argumentative in nature and since the learned counsel for the respondent objected to such affidavit being filed on the last date of hearing, the Court does not think it necessary to refer to the same. The rejoinder affidavit, of course, seeks to deny the allegation of the respondent that he never came to Ahmedabad, but it is not necessary to refer to the said part of the rejoinder either, as the learned counsel for the petitioner has argued the case on the basis that even if the respondent had not come to Ahmedabad in the past, the present petition is maintainable without going into the controversy as to whether the respondent had ever come to Ahmedabad after the marriage in question.

5. The parties have not chosen to lead oral evidence in this matter as the dispute between the parties about the alleged fraud in the petitioner's giving consent to the marriage with the respondent was already examined by the Ecclesiastical Court called "Tribunal Diocesanum Palaiense". The parties have, therefore, referred to the facts recorded by the Tribunal in its judgment dated 10.10.1995 which is produced by the respondent with his affidavit in reply and heavily relied upon by him. The Court has, therefore, proceeded on the facts as recorded by the said Tribunal and as explained by the parties in their respective pleadings. The matter has of course been aruged on the questions as to what inferences are to be drawn from those facts.

6. The following issues have been raised for decision of this Court :-

(i) Whether this Court has the jurisdiction to entertain and try this petition ?

(ii) Whether the petitioner is entitled to a decree of nullity of marriage on the ground that her consent for the marriage in question with the respondent was obtained by fraud ?

(iii) Whether this Court can take a view different from the view taken by the Ecclesiastical Court that the petitioner's consent cannot be said to have been obtained by fraud ?

7. As far as the first question about territorial jurisdiction is concerned, Mr KK Nair for the respondent even submitted that the first issue about the jurisdiction may be treated as a preliminary issue and that further hearing of the petition may be adjourned after the decision is rendered on the said preliminary issue so that the aggrieved party can go in appeal against the finding on such preliminary issue.

In the facts and circumstances of the case, the request of Mr Nair was rejected and the Court considered it just and proper to hear the petition on all issues and not to go for any piece-meal hearing.

JURISDICTION - Issue No. 1

8. As far as the question of jurisdiction is concerned, the relevant provisions of the Indian Divorce Act, 1869 required to be referred to are as under :-

The preamble of the Act reads as under :-

"Whereas it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; It is hereby enacted as follows :-

1. Short title, Commencement of Act.- This Act may be called the Indian Divorce Act and shall come into operation of the first day of April, 1889."

2. Extent of Act. - This Act extends to the whole of India except the State of Jammu and Kashmir.

Extent of power to grant relief generally,

Nothing hereinafter contained shall authorise any Court to grant any relief under this Act except where the petitioner or respondent professes the

Christian religion.

and to make decrees of dissolution,

or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time when the petition is presented,

or of nullity

or to make decrees of nullity of marriage except where the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition,

or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition.

3. Interpretation clause.- In this Act, unless there be something repugnant in the subject or context -

"High Court",

(1) "High Court" means with reference to any area -

(a) in a State, the High Court for that State;
(b) to (ee) ... ...

and in the case of any petition under this Act, "High Court" means the High Court for the area where the husband and wife reside or last resided together.

(2) "District Judge" means a Judge of a principal civil court of original jurisdiction however designated;

(3) "District Court" means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together;

(emphasis supplied)

"Court"

(4) "Court" means the High Court or the District Court, as the case may be:

xxx xxx xxx xxx xxx

4. Matrimonial jurisdiction of High Courts to be exercised subject to Act - Exception.- The jurisdiction now exercised by the High Courts in respect of divorce a mensa et toro, and in all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise; except so far as relates to the granting of marriage licences, which may be granted as if this Act had not been passed.

18. Petition for decree of nullity.- Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

19. Grounds of decree.- Such decree may be made on any of the following grounds :-

(1) that the respondent was impotent at the time of marriage and at the time of the institution of the suit;
(2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
(3) that either party was a lunatic or idiot at the time of the marriage;
(4) that the former husband or wife of either party was living at the time of the marriage and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud."

(emphasis supplied)

9. The contention of Mr Nair for the respondent is that as per the underlined words in Section 3(1)(a) only that Court will have the jurisdiction "where the husband and wife reside (at the time of institution of the petition) or (where the husband and wife) last resided together". It is submitted that since the respondent had never come to Ahmedabad or Gujarat, the petitioner and the respondent had never resided in Gujarat and, therefore, the question of their last residing together in Gujarat also did not arise. It is submitted that as per the provisions of Section 4 of the Act, the jurisdiction under the Act can be exercised only by such Courts on which jurisdiction is conferred and not by any other Court. The learned counsel for the respondent has relied on the following authorities :-

AIR 1984 Bom. 310
AIR 1991 Bom. 156
AIR 1993 Bom. 61
AIR 1995 Kerala 16

10. On the other hand, Ms Rani Advani, learned counsel for the petitioner has submitted that in view of the provisions of Section 2 of the Act, this Court has ample jurisdiction to make a decree of nullity of marriage as the marriage in the instant case was solemnized in India and the petitioner is residing in India at the time of presenting the petition and that these facts are not disputed. Admittedly the petitioner has been residing at Ahmedabad since 1982 onwards.

10.1 It is contended by Ms Advani for the petitioner that since the petitioner has prayed for a decree of nullity of marriage on the ground that her consent to the marriage in question was obtained by fraud, this petition would not be governed by the provisions of Sections 18 and 19 of the Act. Section 19 of the Act clearly provides in terms that nothing in this Section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud. Therefore, the power of the High Court under clause 35 of the Letters Patent to make decrees of nullity of marriage of Christians on the ground that the consent was obtained by fraud is not taken away by any of the provisions of the Act. It is submitted that it is only when the decree of nullity of marriage is sought on any of the four grounds mentioned in the main part of Section 19 that the question of jurisdiction may arise. However, since that is not the case of the petitioner at this hearing, the provisions of Section 3 of the Act would not be

applicable in the instant case.

10.2 The learned counsel for the petitioner has also submitted in the alternative that under clause 12 of the Letters Patent applicable to the Bombay High Court and consequently to the High Court of Gujarat, this Court has the jurisdiction to receive, try and determine suits of every description if the cause of action has arisen either wholly or in case of the leave of the Court having been obtained, in part, within the local limits of the jurisdiction of this Court. It is, therefore, submitted that if any leave is required, the same may be granted.

Clause 19 of the Letters Patent has also been relied upon as the said clause provides that with respect to the law of equity to be applied to each case coming before the High Court, such law or equity shall be the law or equity which would have been applied by the High Court to such case if these Letters Patent had not been issued. The learned counsel for the petitioner has also relied on the decision of the Full Bench of Madras High Court in Sumathi Ammal vs. D. Paul, AIR 1936 Mad. 324. The learned counsel for the petitioner has further relied on the decisions in AIR 1984 P&H 305 and AIR 1980 Ker.131.

10.3 It is further submitted by Ms. Advani in the alternative that the words " where the husband and wife reside" in Section 3(1)(a) of the Act mean " where the husband or the wife resides" i.e. in the definition of the High Court as the High Court for the area where the husband and wife reside or last resided together, the reference is to the High Court for the area where the husband or the wife resides at the time of institution of the petition, or the husband and the wife last resided together and that since the petitioner-wife has been residing in Gujarat since 1982, this Court does have the jurisdiction to entertain and try this petition. It is contended that if the word "and" in the words "husband and wife" is read literally, it would be a tautology as "husband and wife reside together" and "husband and wife last resided together" will have the same meaning, because if the parties are presently residing together in State A, then obviously it can never be said that they last resided together in any other State. It is streneously submitted that the difference was not merely of tense i.e. present tense and past tense but the requirement is either "the husband and wife last resided together in the concerned State" or "the husband or wife resides in the concerned State at the time of filing the petition for a decree of nullity of marriage".

11. Before dealing with the aforesaid contentions, it is necessary to set out the relevant provisions of the Letters Patent with respect to the matrimonial jurisdiction and Civil jurisdiction of the Bombay High Court which are applicable to this Court also.

"Matrimonial Jurisidiction

35. Matrimonial Jurisdiction.- And we do further ordain that the said High Court of Judicature at Bombay shall have jurisdiction within the Presidency of Bombay in matters matrimonial between Our subjects professing the Christian religion : Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.

Civil Jurisdiction of the High Court.

11. Local limits of the Original Jurisdiction of the High Court .- And we do hereby ordain that the said High Court of Judicature at Bombay shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time, be declared and prescribed by any law made by the Governor in Council and until some local limits shall be declared and prescribed, within the limits of the local jurisdiction of the said High Court of Bombay at the date publication of these present, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and presented as the local limits of such jurisdiction.

12. Original jurisdiction as to Suits.- And we do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated or in all other cases if the cause of action shall have arise, either wholly, or in case of the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original

jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally wrok for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cae falling within the jurisdiction of the Small Cause Court at Bombay or the Bombay City Civil Court.

13. Extra ordinary Original Civil Jurisdiction.And we do further ordain that the said High Court of Judicature at Bombay shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court; Whether within or without the Presidency of Bombay, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court."

(emphasis supplied)

An analysis of the aforesaid provisions reveals that while the Letters Patent applicable to this Court provides for Civil Jurisdiction of the High Court to be exercised ordinarily within territorial limits of the High Court which, for this Court, means the State of Gujarat, there is no such territorial fetter on the matrimonial jurisdiction of this Court under Clasue 35 of the Letters Patent in the sense that the cause of action for a matrimonial matter between Christians under clause 35 is not required to have arisen within the State of Bombay nor the respondent is required to have resided within the Presidency of Bombay. Clause 35 (unlike clause 12) of the Letters Patent confers all pervasive unrestricted jurisdiction on this Court in matters matrimonial between Christians in the widest possible terms though the clause does not purport to take away the jurisdiction of other Courts. Before, however, expressing any final opinion on this question, it is necessary to deal with the authorities cited by the learned counsel for the parties.

12.0 DECISIONS CITED ON BEHALF OF THE PETITIONER-WIFE.

12.1 As regards the decision of the Full Bench of the Madras High Court in Sumathi Ammal vs. D. Paul, AIR 1936 Mad. 324 and particularly the observations of

Mockett, J. relied upon on behalf of the petitioner, that was a case where the husband was residing in the State of Mysore i.e. in outside British India, the marriage was solemnized in the State of Mysore and the parties last resided together in the Mysore State. However, the wife filed a suit for a decree of nullity of her marriage before the High Court of Madras. The question of jurisdiction was raised. Mockett, J. observed that so far as the Statute Law in India relating to dissolution is concerned, it is in accord with the established rule of Private International Law, but so far as decrees for nullity are concerned, the Indian Statute still confers upon the Indian Courts jurisdiction under certain circumstances and that under the Indian Divorce Act it is the petitioner's residence which is material. Mockett, J. further observed as under :-

> "It is clear that under the Indian Divorce Act as amended, I have express jurisdiction conferred upon me to grant a decree for nullity which is unquestionably binding in British India even though the parties are domiciled elsewhere... ... ... The petitioner, however, relies on that part of S. 2 which confers jurisdiction in suits for nullity when the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition and that once those conditions are satisfied, the Court has the jurisdiction."

The learned Judge then observed that it was clear from Section 3 of the Divorce Act that the Madras High Court is the proper Tribunal for petitions emanating from the Mysore State. The Court passed a decree for nullity with costs. The further opinions of Stone, J., Mockett, J. and Wadsworth, J. were on the question as to whether the decree should be nisi or absolute, as it was the said limited question which was referred to the Full Bench. In the course of delivering the order of reference, Mockett, J. went to the extent of observing that where the party before the Court had no apparent remedy, it was open to the High Court to assume for itself the jurisdiction where the petitioner's position is "intolerable".

12.2 Simiarly, in Rachel Benjamin vs. Benjamin Solomon Benjamin, ARI 1926 Bom. 169, Crump, J. speaking for the Court laid down that clause 35 of the Letters Patent conferred jurisdiction on the High Court in matrimonial disputes to cases where the parties are

Christians and that the scope of the clause was confined to proceedings between Christians, it was further held that clause 35 of the Letters Patent intended to replace in a wider and more modern form the ecclesiastical jurisdiction of the Supreme Court. It was thereafter observed that the scope of clause 35 as explained in para 33 of the Despatch, was that legislation should be undertaken to deal more completely with matrimonial disputes between Christians and that it is well known that after a prolonged delay due to the difficulty of determining whether residence or domicile should be the test, the Legislature selected the former alternative, and enacted the Indian Divorce Act of 1869. Crump, J. further referred to the observations of the Appeal Court in Nusserwanjee Wadia vs. Eleonora Wadia, 15 Bom.L.R. 593 wherein it was observed that under the provisions of the Indian Divorce Act, the High Court has such matrimonial jurisdiction as was conferred by the Letters Patent, or as was exercised by the Supreme Court. Clause 35 of the Letters Patents gave matrimonial jurisdiction between Christians and that the Indian Divorce Act, 1869 was enacted to supplement clause 35 of the Letters Patent.

Crump, J. further explained the scope of clause 12 of the Letters Patent by referring to the judgment of the Privy Council in Ardaseer Cursetjee vs. Perozeboye, (1856) 6 M.I.A. 348, where Their Lordships said "but we should much regret if there were no Court and no law whereby a remedy could be administered to the evils which must be incidental to married life amongst them (non-Christians)". Clause 12 of the Letters Patent was deliberately intended to remove the difficulty, where the parties professed not christianity but other religion/s.

12.3 In Robasa Khanum vs. Khodadad Bomanji Irani, AIR 1947 Bom. 272, Chagla, J. (as His Lordship then was) speaking for the Division Bench of the Bombay High Court observed that clause 12 of the Letters Patent confers original jurisdiction upon the High Court to try suits of every description and that expression is wide enough to include in it even matrimonial suits were parties cannot obtain relief by invoking the special matrimonial jurisdiction of the High Court. In para 13 of the judgment, Chagla, J. observed as under :-

"We might also consider another point which was debated at the Bar but which does not present much difficulty. Has the High Court the jurisdiction to try matrimonial suits on the

Original Side ? By cl. 42, Supreme Court Charter, 1823, the Supreme Court was constituted a Court of Ecclesiastical Jurisdiction, and by cl. 35, Letters Patent the High Court has been given Matrimonial Jurisdiction. But this jurisdiction is confined to cases where one of the parties professes the Christian religion and it is now regulated by the Indian Divorce Act and the Indian and Colonial Divorce Jurisdiction Act, 1926. A special Court is also set up for deciding matrimonial matters where parties are Parsis under the Parsi Marriage and Divorce Act. The Dissolution of Muslim Marriages Act (8 [VIII] of 1939) does not set up any special Court and presumably the cases coming under that Act would be tried on the Original Side. But apart from special legislation and special jurisdiction, the High Courts in India have never refused to give redress in suits concerning matrimonial matters. ... ... Clause 12, Letters Patent confers original jurisdiction upon the High Court to try suits of every description, and that expression is wide enough to include in it even matrimonial suits where parties cannot obtain relief by invoking the special matrimonial jurisdiction of the High Court."

(emphasis supplied)

12.4 In T. Saroja David vs. Christie Fancis, AIR 1966 AP 178, Jagmohan Reddy, J. (as His Lordship then was) speaking for the Andhra Pradesh High Court traced the history of the jurisdiction of the High Court in matrimonial matters between the Christians in the following words :-

"Section 19 provides that a decree as specified in Section 18, namely of nullity of marriage, may be made on any of the four grounds specified therein. Thereafter the following saving has been effected.

`Nothing in this Section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.'

It may be observed that in so far as dissolution of marriage and nullity of marriage on the

specific grounds stated in Section 19, are concerned both the District Court and the High Court have concurrent jurisdiction and when the case is one for declaration of nullity of marriage on the ground of force or fraud, the exclusive jurisdiction of the High Court is saved. In order to understand what this jurisdiction is, it is necessary to refer to the history of that jurisdiction. Originally, the ecclesiastical Courts in England were empowered to deal with matrimonial matters. The Supreme Court in India which were administering the English Law as it was on a particular day, had inherited this jurisdiction from the Ecclesiastical Courts. Ultimately, by statute the High Courts have inherited their jurisdiction direct from the Supreme Courts. Thus the power to make decrees of nullity of marriage on the ground of duress or fraud was inherited by the Supreme Courts from the Ecclesiastical Courts and the High Courts inherited that power from the Supreme Courts. This Court has, therefore, clear jurisdiction to entertain this petition."

(emphasis supplied)

12.5 In Pragati Varghese vs. Cyril George Varghese, AIR 1997 Bom. 349, a Full Bench of the Bombay High Court held that the different treatment which is accorded to Christian women under Section 10 of the Indian Divorce Act, 1869 as compared to the Christian husbands and as compared to the wives who are governed by other enactments is discriminatory and violative of both Articles 14 and 15 of the Constitution and that, therefore, the provisions contained in section 10 of the Act are also violative of Article 21 of the Constitution. After a review of several decisions of the Supreme Court and also the recommendations made by the Law Commission of India (19th Report) and the observations made by the Apex Court in several decisions, the Full Bench of the Bombay High Court held in the aforesaid decision that denial of right to divorce constitutes violation of right to life under Article 21 of the Constitution.

13.0 DECISIONS CITED ON BEHALF OF THE RESPONDENT-HUSBAND.

13.1 The decision of the Special Bench of the Bombay High Court in A. vs. B., AIR 1993 Bom. 61 has been relied upon by Mr Nair for the respondent for contending that under Section 3(1) of the Act "High Court" means

with reference to any area, in a State, the High Court for that State and in the case of any petition under the Act, "High Court" means the High Court for the area where the husband and wife reside or last resided together. For any place situated in any District in the State of Maharashtra, the High Court will mean the High Court at Bombay as by definition, High Court means with reference to any area in a State, the High Court for that State.

13.2 A Special Bench of the Kerala High Court held in George Sebastian vs. Molly Joseph, AIR 1995 Ker. 16 relied upon by Mr Nair that a Christian marriage can be declared null and void only by a decree of Court as provided for in sections 18 and 19 of the Indian Divorce Act and that ecclesiastical tribunals have no jurisdiction to annul marriages involving the civil rights of parties. In view of the provisions of Section 4 of the Act, the Court is not empowered to go outside the boundaries of the Divorce Act for granting a decree of divorce or a decree of nullity. The message contained in Section is unambiguously clear particularly with the words "and not otherwise" that the Court cannot exercise jurisdiction outside the boundaries fixed in the Divorce Act.

13.3 In Dnyaneshwar vs. Surekha, AIR 1984 Bom. 310 the Bombay High Court laid down that where the parties to the petition for a decree of nullity of marriage had at no time intended to make Bombay their matrimonial home and they had last resided and cohabited together at Nasik, it was held that the Bombay High Court had no jurisdiction to entertain the petition under Section 19 of the Divorce Act. The view of the Division Bench in Dnyaneshwar (Supra) that only the District Court at Nasik had the jurisdiction and that the Bombay High Court did not have the jurisdiction unless the parties were residing within its local limits of original Civil Jurisdiction did not find favour with the Special Bench of the Bombay High Court in A. Vs. B., AIR 1993 Bom. 61. Similarly the decision of a learned Single Judge of the Bombay High Court in Joseph John Carvalho vs. Leila Joseph Carvalho, AIR 1991 Bom. 156 to the effect that the parties must reside or have last resided within the limits of the original civil jurisdiction of the Bombay High Court to invoke the jurisdiction of the High Court under Sections 18 and 19 of the Divorce Act was expressly overruled by the Special Bench in A. vs. B., AIR 1993 Bom. 61 and it was held that both the High Court and the District Court have territorial jurisdiction. Since the Special Bench in A. vs. B., AIR 1993 Bom. 61 did not decide any controversy other than the correctness of the

aforesaid view of the Division bench in Dnyaneshwar vs. Surekha, AIR 1984 Bom. 310, the decision of the Special Bench of the Bombay High Court does not carry the respondent's case any further as it only held that the jurisdiction of the District Court in a State and the jurisdiction of the High Court in that State are not mutually exclusive.

14. Upon an analysis of the provisions of clause 35 of the Letters Patent conferring matrimonial jurisdiction on this Court read in contrast with the provisions contained in Clauses 11, 12 and 13 of the Letters Patent conferring civil jurisdiction on this Court and upon a review of the aforesaid authorities and particularly in view of the decisions considered in paras 12.1 to 12.4 hereinabove, it is clear that for invoking the jurisdiction of this Court under clause 35 of the Letters Patent, it is not necessary for a Christian to show that the petitioner as well as the respondent reside within the jurisdiction of this Court or that the petitioner and the respondent last resided together within the jurisdiction of this Court. Once the petitioner shows that the marriage was solemnized in India and the petitioner is a resident in India, this Court gets the jurisdiction to decide the petition for declaration of nullity of marriage between the parties. It is pertinent to note that the Indian Divorce Act, 1869 does not codify the entire law relating to divorce of persons professing the Christian religion but it merely amends the said law and it confers upon certain other Courts also jurisdiction in matrimonial matters but it does not take away and expressly saves the jurisdiction of the High Court to make decrees of nullity of marriages on the ground that the consent of either party was obtained by force or fraud. The provisions of Section 4 of the Act providing that - the jurisdiction exercised by the High Courts in matrimonial matters shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise does not curtail the power of the High Court under clause 35 of the Letters Patent but it confers powers on the District Courts to exercise jurisdiction in matrimonial matters particularly those specified in Section 10 and the main part of Section 19 of the Act, but excluding the matters covered by the second part of Section 19 of the Act.

Hence even after the enactment of the Indian Divorce Act, 1869, under the inherent jurisdiction of the High Court conferred upon it under clause 42 of the Supreme Court Charter, 1823 and clause 35 of the Letters

Patent of the Bombay High Court, which is also possessed by this Court, this Court has the jurisdiction to try matrimonial suits between Christians and that while the suits for dissolution of a Christian marriage on the grounds set out in Section 10 and for a decree of nullity on the four grounds set out in the main part of Section 19 of the Indian Divorce Act, 1869 i.e. impotency of the respondent, prohibited decrees of consanguinity or affinity, lunacy or idiocy of the respondent and bigamy have to be filed either in the District Court or in the High Court within whose jurisdiction the parties last resided or the husband and wife resided at the time of filing the petition, this territorial fetter will not affect the jurisdiction of the High Court (under clause 35 of the Letters Patent as applicable to Bombay and Gujarat High Courts) to make decrees of nullity of marriage on the ground that the consent of the petitioner was obtained by force or fraud. The Legislature has expressly saved the jurisdiction of the High Court (under clause 35 of the Letters Patent) to make decrees of nullity of marriage on the ground of consent vitiated by force or fraud, as distinguished from the jurisdiction conferred upon the High Court and the District Court to pass a decree of nullity of marriage on any one or more of the four specified grounds i.e. impotency of the respondent, prohibited decrees of consanguinity or affinity, lunacy or idiocy of the respondent and bigamy.

15. In the view that this Court takes about the jurisdiction of this Court under clause 35 of the Letters Patent as canvassed by the learned counsel for the petitioner (para 10.1 hereinabove), it is not necessary to express any opinion about the alternative submissions made by the learned counsel for the petitioner as reflected in paras 10.2 and 10.3 hereinabove. Similarly, it is not necessary to deal with the decisions cited on behalf of the petitioner in Dolly Bathena vs. Shaik Fazle Ellahi, AIR 1942 Cal. 42, Mrs. Pritma Sharma vs. Mohinder S. Bhardwah, AIR 1984 P&H 305 and Mary Kurian vs. T.T. Joseph, AIR 1980 Ker.131 as the same would have been of relevance if the petitioner were to press her original case that the respondent had visited Gujarat in 1985 or 1986 but since that case was not pressed at the hearing, there is no need to discuss the aforesaid authorities. So also it is not necessary to refer to the decisions in AIR 1960 SC 936, AIR 1965 SC 1473 and AIR 1966 SC 1678 cited on behalf of the respondent on the question of interpretation of statutes while dealing with the contention raised in para 10.3 above.

ON MERITS - Issue Nos. 2 & 3

16. As regards the main question whether the petitioner's consent for the marriage in question was obtained by fraud, the learned counsel for the petitioner has relied on the principles enunciated in the judgment of Ecclesiastical Tribunal to the effect that the error concerning the person renders marriage invalid, error of certain qualitative elements can evolve itself into being equivalent to error on person i.e. certain qualitative factors could affect the very subject or object of marriage consent. Regarding fraudulent error canon law recognizes deception as sufficient ground for nullity. It would be fraud or deception if there was a deliberate concealment of the true self to the proposed spouse on some significant point, the revelation of which would seriously and adversely affect the peaceful communion of marital life. The fraud in such a case is motivated by the fear that if the fact in question is made known it will lead to a refusal of marital consent.

It is submitted that the respondent had himself as well as through his broker and his family held out that he was a person who was only 31 years old with a comfortable job in a semi-government organization called AGRO Corporation with a monthly salary of about Rs.1500/and further that the respondent was the youngest son of his parents and, therefore, as per the custom and tradition of the community, the youngest son would inherit the family property and that he would get three acres of land with a house. It is submitted that the respondent also represented that he was a graduate but after the marriage whenever the petitioner inquired of the respondent as to why he did not have a job inspite of having educational qualification, the respondent never had any testimonial to show that he had any degree in graduation. It is submitted that taking an over all view of all the aforesaid deceptions, the respondent had held himself out as a qualitatively different person than what he actually was and that, therefore, the consent given by the petitioner was obtained by the respondent by fraud. It is also submitted that the question of the petitioner's consent is required to be examined in the background of the fact that the petitioner was residing at Ahmedabad since 1982 and that when she went to Kerala, the marriage was arranged through a marriage broker.

17. On the other hand, the learned counsel for the respondent submitted that there was no misrepresentation on any of the relevant factors. The respondent had not disclosed his age as 31 and that merely because the respondent looked younger than his age, the respondent

cannot be blamed. As regards the financial aspects, it is stated that the respondent did have a job in AGRO Corporation at the time of marriage, but it was a temporary job and, therefore, for whatever reason the respondent was not continued in employment by the concerned Company, it cannot be said that the petitioner had committed any fraud or deception.

The following observations in in A. vs. B., AIR 1993 Bom 61 as extracted from the decision of a Division bench of the Kerala High Court in Moore vs. Valsa, (1991) 2 Ker. LT 504 have also been relied upon by Mr Nair for the respondent :-

> "the concept of fraud in the Contract Act is of wider amplitude than in relation to matrimonial causes. The boundaries of concept of fraud cannot be stretched as wide as including concealment of every fact. The Division Bench observed that "it has to be born in mind that at the time of negotiation or courtship, parties might try to project themselves in the best possible form. Some amount of exaggeration in representation is often experienced to make him or her acceptable to the other as a spouse. Mere concealment or overstatement of facts by itself does not invalidate a marriage". At the same time, the Division bench pointed out that the prestine view that scope of fraud in matrimonial law has a narrow radius need not rigidly be adhered to in modern times.
>
> Over the years legislature liberalized the grounds for dissolution in matrimonial causes and thereby opened wider vision and perspective. This change had corresponding effect on the Courts as they adopted more pragmatic approach in construing the grounds for dissolution or annulment of marriage. In a way a more liberal outlook was adopted by the Courts in recent years. This trend gained approval from the Apex Court in Reynold Rajamani v. Union of India, AIR 1982 SC 1261. Nonetheless a mis-statement or over-statement about one's quality or qualification would not amount to fraud as envisaged in the Divorce Act unless it is in respect of a factor vital to the marriage alliance itself."

18. Under the Christian Marriage Law, (as embodied in

Canon Law) matrimonial consent is an act of the will by which a man and woman through an irrevocable covenant, naturally give and accept each other in order to establish marriage, which no human power can replace. Canon 820(1) reads as under :

"Error concerning the person renders marriage invalid".

Error concerning the quality of the person, even if such error is the cause of the contract does not invalidate matrimony unless this quality was directly and principally intended".

Canon 821 reads as under :-

"A person contracts invalidly who enters marriage deceived by fraud, perpetuated to obtain consent, concerning some quality of the other party which of its very nature can seriously disturb the partnership of conjugal life."

Error on person is called substantial since the very material object of the matrimonial contract is vitiated by such an error. No one can give true matrimonial consent unless the other party to the contract is the person he/she intends to marry. Error on any quality of the person does not by itself vitiate matrimonial consent, but it does if the error affects the very substance or object of the contract itself. Traditionally the norm regarding invalidating error of quality was interpreted by jurisprudence to mean those qualities which determined the physical identity of a person in question. This norm was seen as including and applying to only those qualities which picked up this person and distinguished him or her from all others. However, Vatical II steered a new approach to the interpretation of this norm and the jurisprudence has developed accordingly the concept of person beyond physical identity alone and made it include many other qualities whose absence or presence would in effect produce a substantially different person. Regarding fraudulent error Canon Law recognizes deception as sufficient ground for nullity. For the verification of the fraud or deception there must have been a deliberate misrepresentation or a deliberate concealing of the true self to the proposed spouse on some significant point, the revelation of which would seriously and adversely affect the peaceful communion of marital life. The fraud in such a case is motivated by the fear that if the fact in question is made known, it will lead to a refusal of

marital consent.

19. The parties have chosen not to lead oral evidence and the facts are within narrow compass. There is no dispute about the fact that the respondent was aged about 41 years at the time of marriage. One of the disputes is whether before the marriage it was represented by the respondent or on his behalf that he was aged 31 years old. Although this dispute does not appear to have been raised in the memo of the petition earlier, from the pleadings of the parties and the controversy before the Ecclesiastical Tribunal as evident from the order which is produced by the respondent in his affidavit in reply, it is clear that the said dispute was inter connected or was treated as a part of the dispute regarding the wider issue of personal qualities and earning capacity and the economic status of the respondent-husband.

Similarly, there is no dispute about the fact that the respondent is not employed. One of the disputes is whether he was employed before and at the time of marriage with the petitioner. Similarly, there is no dispute about the fact that the respondent did not have any property before or at the time of marriage. One of the disputes is whether it was represented by or on behalf of the respondent that he had property like 3 Acres of fertile land with a house. Similarly, one of the disputes is whether the respondent had represented before or at the time of marriage that he was educated and possessed a degree of Bachelor of Arts.

20. Although the aforesaid disputes or controversies are evident from the pleadings of the parties right from the beginning, the only documentary evidence that the respondent has produced to throw light on the aforesaid issues is a photostat copy of the certificate dated 12.5.1987 being the degree certificate issued by University of Kerala certifying that the respondent was admitted to the degree of Bachelor of Arts after passing the prescribed examination in the Third Class in Part I-English, in the Third Class in Part II-Second Language (Malayalam) and in the Third Class in Part III-Optional Subject (Group (iii) Economics Main and Political Science and Sociology Subsidiaries) in September 1970, April 1968 and September 1969 respectively. It is surprising as to how the respondent cleared his first year examination in September 1970 though he is said to have cleared Part-II and Part-III examinations in April 1968 and September, 1969 respectively. Be that as it may, while the respondent has produced the above document to show his educational qualification i.e. that he had graduated

before the marriage between the parties took place in the year 1985, the respondent has not produced any document to show that he was employed in the year 1985 i.e. before the parties got married in June, 1985 or thereafter with the AGRO Corporation and that he was earning a monthly salary of Rs.1500/- or any other amount though it is asserted by the respondent in his affidavit in reply that "he was employed as a representative with the AGRO Corporation and was receiving Rs.1500/- out of that". There is also no dispute about the fact that the petitioner was serving at Ahmedabad before the marriage and that the petitioner and the respondent did not personally know each other before the marriage. Even the respondent himself has stated in para 5 of the reply affidavit that the marriage proposal was introduced by one Chackochan Murickan on 28.4.1985 and that one Mathachan Manchirayil was introduced as a mediator by the petitioner's parents and that the respondent was not aware of any commission that has been paid to the said gentleman and that the said gentleman is a neighbour of the petitioner's parents. Thus it is clear that the marriage was arranged through a broker and, therefore, there appears to be considerable substance in the case of the petitioner that the petitioner was kept in the dark about the age and employment of the respondent, if also not about his property. In view of the admitted facts that the respondent was aged 41 years at the time of marriage (in 1985) as against the petitioner's age being 29 years at that time, and that the respondent has not produced any evidence to show his employment in the year 1985 (inspite of his case that he was employed with AGRO Corporation on a salary of Rs.1500/- per month), there appears to be considerable substance in the grievance being made by the petitioner that she was deceived about the age and job of the respondent. It is true that prima facie it may appear that this is a dispute where there is a word of the petitioner-wife against the word of the respondent-husband, but this question is required to be examined in the context of the approach and attitude of the girls' parents in India in general that the parents may agree to their daughter marrying an older man with a good job and property so that she will have economic security and social status or the parents may agree to their daughter being married to a young, educated and employed boy though may not be having very high earnings and properties in the hope that the groom will have all the time in the world to climb up the career ladder and to accumulate the property in future, but in any case the parents would not like their daughter to be a loser on all fronts or to have the worst of both the worlds i.e they would not like their educated employed daughter to

be married to a man 12 years older than her when the man does not have any job or property.

21. That misrepresentations were made by the respondent himself or on his behalf about age, employment and property of the respondent before the marriage is also borne out from the following observations made by the Ecclesiastical Court in its order dated 10.10.1995 that the respondent had been expecting as much as money as possible from the petitioner to get cleared his debts:-

> "Lillykutty (petitioner) has accused fraud from the part of Simon her husband regarding his age, educational qualification, job, financial status, family situation, character etc. It is true that Simon is 13 years elder to Lillykutty, had financial problems and that he did not have stable job etc. However, it is equally true that Lillykutty and her family had not made any earnest effort to verify these facts regarding Simon. If they were interested they could have easily found out the reality. It seems that they were not interested to study his age correctly because Simon looked young and fit for Lillykutty. Hence a deception regarding Simon's age does not stand proved. His age given by Lillykutty's parents in the property deed does not prove a deception from the part of Simon regarding his age. There is no evidence to prove that this had been given by Simon and that Lillykutty or his parents had made efforts to know the correct age of Simon. Besides an age difference in itself may not invalidate a marriage unless there is proof that the party had intended not to marry a person with so much of age difference."

A deception about age is also clear from the fact that the age given by the petitioner's parents in the property deed transferring 50 cents of land to the petitioner and respondent jointly gave the respondent's age as 41. It does not require more than common sense to state that if the respondent had held out his correct age as 41 years, there was no reason for the petitioner's parents to state the respondent's age as 31 years in the property deed under which they were transferring 45 cents of their land to the petitioner and respondent jointly immediately after the marriage.

22. The learned counsel for the respondent-husband

has also urged tht the petitioner had not made any grievance to the respondent in any of her letters from 27.6.1985 (her first letter) to 12.9.1986 (her last letter) about the alleged fraud played by the respondent regarding the age difference or unemployment of the respondent.

Though the argument is prima facie attractive, the letters instead of supporting the respondent, go against the respondent on the issue of unemployment of the respondent. While the letters from the petitioner to the respondent are certainly in endearing terms, they also creat an impression that the respondent had somehow kept the petitioner under the illusion that the respondent was working somewhere. For instance, in the letter dated 9.7.1987 (Exh. R7(a) relevant page 34 of the respondent's affidavit in reply), the following words clearly indicate that the petitioner was under the impression that the respondent was working :-

"Eattan (an endearing term), are you going to office. Now where are your field work ? Did you went to Kannur as said. .. .. Then regarding the cash. Now in all the banks in Ahmedabad clearing is not being done properly. I shall try to send some cash by the Ist week of August. But I cannot sent the Rupees 6,000/which Eattan told. I shall try to sent Rupees 3,000/by next month. Otherwise, I shall sent Rs.500 each every month as money order."

Then again in the letter dated 12.7.1985 (Exh.R9(a) page 48 of the respondent's reply affidavit)

"Yesterday also I expected Chettan's letter. Why my chettan is causing delay in sending letters to me. Is it because of the buziness with work ? or is it due to laziness. I hope that you give a reply to this letter at least. ... ...Where are you chettan now going for field work ? Are you going to Kannur ? How the job etc. going on."

The aforesaid letters clearly reveal that the respondent had kept the petitioner under the impression that the respondent was employed and was doing the field work but the respondent has not produced any document to show that he was employed at any time between June, 1985 and September, 1986 during the period when the aforesaid letters were written by the petitioner to the respondent. It is clear that it was after the euphoria of her marriage was over within a period of a little over a year that the petitioner came to see the real person that the

respondent was and, therefore, she approached the Ecclesiastical Tribunal at Ahmedabad for getting a declaration about nullity of her marriage with the respondent. That request came to be turned down on the ground of jurisdiction. Therefore, the respondent approached the Tribunal in Kerala. The rest of the developments are already noted hereinabove.

23. To sum up and applying the test indicated earlier, it is clear that the respondent had held himself out either on his own or through the marriage broker, as a man aged only 31 years having a decent job with AGRO Corporation at a monthly salary of Rs.1500/-. In view of the admitted fact that the respondent was 41 years at the time of marriage and in absence of any documentary evidence produced by the respondent to show that he was employed with AGRO Corporation at the relevant time in the year 1985, it is clear that the respondent had offered himself as a different person and that if this fact were known to the petitioner or to her parents, neither she nor they would have given consent for the marriage between the petitioner and the respondent.

24. Of course, Mr Nair has strenuously argued that once the Ecclesiastical Tribunal held that the petitioner's consent for the marriage in question was not obtained by the respondent by fraud, the said finding is binding on the parties i.e. both the petitioner and the respondent and that this Court cannot go behind that finding and if any Court were competent to go behind that finding, it would be only the Kerala High Court. The second part of this submission is already dealt with while discussing issue No. 1 relating to jurisdiction and, therefore, it is not necessary to reiterate that discussion. As far as the first part of the submission is concerned, the matter is no longer res integra and this question has been considered by the Special Bench of the Kerala High Court in George Sebastian vs. Molly Joseph, AIR 1995 Kerala 16 wherein is clearly held that marriage between the parties creates civil rights and the ecclesiastical tribunals have no jurisdiction to annul marriages involving the civil rights of parties. A Christian marriage can be declared null and void only by a decree of Court as provided for in Sections 18 and 19 of the Divorce Act. As already indicated earlier in this judgment, Section 19 of the Act expressly saves the jurisdiction of the High Court to pass a decree of nullity of marriage where the consent of one party was obtained by fraud. That issue is already elaborately discussed hereinabove and, therefore, the aforesaid contention raised by Mr Nair under issue No. 3 also

fails.

25. In view of the aforesaid finding, this Court has no hesitation in holding on issue No. 2 that the petitioner is entitled to get a decree of nullity of the marriage between the petitioner and the respondent which was solemnized on 19.5.1985.

O R D E R

26. In view of the above discussion, this petition is allowed. It is hereby declared that the marriage between the petitioner and the respondent which was solemnized on 19.5.1985 was vitiated as the consent of the petitioner for the said marriage was obtained by fraud. The marriage was, therefore, null and void. There shall be a decree accordingly. Rule is made absolute with costs.

(M.S. Shah, J.)

sundar/-